IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 655 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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BHANVARSINGH PUKHRAJSINGH CHAUHAN - Petitioner(s)
Versus
GUJARAT URJA VIKAS NIGAM LTD. & 1 - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR SN SINHA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/05/2007

ORAL JUDGMENT :

1. The petitioner has invoked Articles 14, 16 and 226 of the Constitution for the prayer of setting aside the order dated 17.7.2001 by which

his services were terminated. After admission of the petition in January 2003, interim relief was refused and an application for wages on the basis of the provisions of section 17-B of the Industrial Disputes Act, 1947 (for short, "the Act") was also rejected. Therefore, after several applications for that purpose, learned counsel for the petitioner has insisted for early final hearing of the petition. On 13.4.2007, learned counsel for the respondent submitted that, under the policy of the respondent, disputes in the nature of the one raised in the petition were required to be settled outside the court and necessary efforts would be made for that purpose by necessary communication with learned counsel for the petitioner. And, if the matter was not settled, learned counsel would address arguments on merits on the next date of hearing which was fixed on 23.4.2007. Learned counsel for the respondent has not cared to remain present that day or thereafter, nor has the proposal for compromise submitted by the petitioner been responded, according to learned counsel Mr.Mishra. Therefore, the petition is required to be heard and disposed in absence of learned counsel for the respondent.

2. It is the case of the petitioner that, after an initial order of suspension and show cause notice dated 16.5.2001, the petitioner has been discharged by way of punishment with stigma by the impugned order dated 17.7.2001 without considering the reply dated 21.6.2001 of the petitioner and without issuance of chargesheet or any departmental enquiry. The petitioner's first departmental appeal was also dismissed by a laconic order and the second appeal was kept pending for a long time.

2.1 On the other hand, immediately after suspension, the petitioner has raised an industrial dispute through the trade union, of which he was an office bearer, and a notice of strike dated 23.5.2001 was given to the respondents so as to inform that the trade union had proposed to call a strike on 9.6.2001 pursuant to the demand of withdrawing the order suspending the petitioner, the show cause notice and the subsequent punitive actions. Even as that dispute was admitted in conciliation and during pendency of the conciliation proceedings, the impugned order of termination had come to be passed by the respondent. Even on facts, the vague charges of submitting a false school leaving certificate for entering the service of

the respondent, mixed with allegations against others and twenty years after his appointment, were not substantiated and made out, according to the submission of the petitioner. It was also alleged that the impugned termination was *mala fide,* by way of victimization and result of union rivalry.

3. According to the affidavits filed on behalf of the respondent, the second appeal of the petitioner was decided on 1.4.2004, that petitioner was not declared to be a "protected worker", the Reference (IT) No.48/2002 was pending before the Industrial Tribunal, Ahmedabad wherein similar prayers were made and that the petitioner had suppressed facts about the criminal case in which he was facing trial for fraud and cheating committed for securing appointment as a peon under the respondent. It is alleged that the criminal case against the petitioner was prolonged on account of the tactics of procrastination adopted by the petitioner who has been seeking adjournments after adjournments since 15.7.2003.

4. Learned counsel Mr.Mishra, appearing for the petitioner, relied upon the provisions of section 33 of the Act to submit that the

termination of service was *ex facie* in violation of those provisions since, admittedly, the dispute of the petitioner was admitted for conciliation on the date of the impugned order and, therefore, in absence of any application under section 33, the termination of service was void. He submitted that, even on facts, the charges levelled against the petitioner in the show cause notice were absurd and motivated which were presumed to have been proved only on account of the fact that the petitioner could not produce the original school leaving certificate in reply to the correspondence of the respondent. He submitted that, admittedly, no departmental enquiry was held and no opportunity of defending himself was afforded to the petitioner. Therefore, termination was bad in law and untenable. He further submitted that the industrial dispute raised by the petitioner and pending before the Industrial Tribunal in the form of Reference (IT) No.42/2002 was raised before the date of termination and, even after amendment of the terms of reference, it may not cover the grievance made before this court and, in any case, the petitioner was entitled to appropriate relief in the present proceeding, while the petitioner may be directed to withdraw that reference and demand in view of the relief

that may be granted.

4.1 Learned counsel relied upon several judgments of this court to claim the relief of reinstatement, in the facts and circumstances of the case. He relied upon judgment of Constitution Bench of the Supreme Court in ***Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Others [2002 (92) FLR 667]*** to submit that not making an application under section 33 (2) (b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to section 33 (2) (b). An employer who does not make an application under section 33 (2) (b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. It was also pointed out from that judgment that, if approval was not given, nothing more was required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed, and consequence of that would be that the employee would be deemed to have continued in service entitling him to all the benefits available. Mr.Mishra also relied upon the judgment of the Supreme Court in ***Tamil Nadu State Transport***

Corporation v. Neethivilangan [2002 (92) FLR 555], wherein it is observed that, while the employer has the discretion to initiate departmental enquiry and pass an order of dismissal or discharge against the workman, the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal, *de-facto* relationship of employer and employee may be ended but not the *de-jure* relationship, for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed under section 33 (2) (b) of the Act on merits, the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employee, the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution.

5. In view of the above factual and legal

position and pendency of the proceedings in this Court and the Tribunal for more than four years while the petitioner is rendered jobless, and in view of the attitude of complete non-cooperation on the part of the respondent even to the extent of not responding to the proposal for compromise submitted by the petitioner in a matter which, under their own policy, was required to be settled and in order to prevent further rounds of litigation, the petition is required to be entertained and allowed so as to direct reinstatement of the petitioner without prejudice to the right of the respondent to hold a proper departmental enquiry, if they choose to do so. As for wages for the intervening period, learned counsel Mr.Mishra submitted that, although the petitioner was not employed elsewhere and was suffering financial difficulties due to illegal termination of his service, he had already offered to settle the dispute, if he were reinstated with continuity of service and consequential benefits and paid only 50% of the backwages.

6. Therefore, the petition is allowed and Rule is made absolute with the direction that the respondent shall reinstate the petitioner, with continuity of service with all consequential

benefits, within a period of 15 days of receipt of a copy of this order and pay 50% of backwages for the period between his date of termination till the date of reinstatement. As stated by learned counsel for the petitioner, the reference pending in the Industrial Court would become infructuous by virtue of this order and shall be withdrawn by the petitioner. In view of the irresponsible and evasive attitude adopted by the respondent, they are directed to pay to the petitioner Rs.10,000/- by way of cost.

Sd/-
(D.H.Waghela, J.)

(KMG Thilake)